STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 28, 2006
v	No. 261841 Macomb Circuit Court
SCOTT WILLIAM ALLEN, Defendant-Appellant.	LC No. 2003-002273-FH

Before: Wilder, P.J. and Kelly and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a) (victim under the age of 13). The jury found defendant not guilty of possession of child sexually abusive material, MCL 750.145c(4). The trial court sentenced defendant to three years probation, the first 12 months to be served in jail. We affirm.

I. Severance

Defendant first contends that the trial court should have granted his motion for mandatory severance because the charges against him were unrelated.[1] We disagree. We review de novo whether defendant was entitled to mandatory severance on the basis that the charges against him were unrelated. *People v Tobey*, 401 Mich 141, 153; 257 NW2d 537 (1977); *People v Abraham*, 256 Mich App 265, 271; 662 NW2d 836 (2003).

At the time the trial court ruled on defendant's motion,[2] MCR 6.120(B) provided:

> On the defendant's motion, the court must sever unrelated offenses for separate trials. For purposes of this rule, two offenses are related if they are based on
>
> (1) the same conduct, or

[1] Defendant does not contend on appeal that permissive severance was appropriate.

[2] Amendments to the rule made in 2005 were effective January 1, 2006. The trial court heard defendant's motion on May 24, 2004.

(2) a series of connected acts or acts constituting part of a single scheme or plan.

The charges against defendant were related because they were based a series of connected acts. In *Tobey*, our Supreme Court held that " 'A series of acts connected together' refers to multiple offenses committed 'to aid in accomplishing another, as with burglary and larceny or kidnapping and robbery'." *Tobey, supra* at 151. Defendant was charged with sexually assaulting his girlfriend's seven-year-old daughter. He was also charged with possessing child sexually abusive material. The victim reported to police that defendant, at various times while they lived together, touched her buttocks, told her how to masturbate, and showed her a picture of a naked girl. After the victim made this complaint, investigators discovered child pornography on defendant's computer. The acts were connected because defendant was viewing the child pornography during the period that he was making sexual advances toward and had sexual contact with the victim, and because he showed the victim a pornographic picture. In *People v Russo*, 439 Mich 584, 699-600; 487 NW2d 698 (1992), our Supreme Court noted that studies demonstrate "that pornography plays a central role in child molestation" and "that the collection and retention of such items is a recurring pattern for some persons whose sexual gratification is obtained through and with children." Further, the Court recognized that "pornography is used in connection with child molestation, for arousal and fantasy and as a means of lowering the intended victim's inhibitions through peer pressure effects . . . a reluctant child can sometimes be convinced to engage in sexual activity by viewing other children having 'fun' in the activity[.]" *Id.* at 600. Because the charges against defendant were based a series of connected acts, they were related and defendant was not entitled to severance under MCR 6.120(B).

II. Sufficiency of the Evidence

Defendant next contends that there was insufficient evidence to support his CSC II conviction. We disagree. "We review de novo challenges to the sufficiency of evidence in criminal trials to determine whether, when the evidence is viewed in the light most favorable to the prosecutor, a rational trier of fact could have found all the elements of the charged crime to have been proved beyond a reasonable doubt." *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002). "In reviewing a sufficiency of the evidence argument, this Court must not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses." *People v Stiller*, 242 Mich App 38, 42; 617 NW2d 697 (2000).

MCL 750.520c(1)(a) provides as follows:

(1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exist:

(a) The other person is under 13 years of age.

Pursuant to MCL 750.520a(o),

> "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:
>
> (i) Revenge.
>
> (ii) To inflict humiliation.
>
> (iii) Out of anger.

Pursuant to MCL 750.520a(d), " 'Intimate parts' includes the primary genital area, groin, inner thigh, buttock, or breast of a human being."

It is not disputed that the victim was under the age of 13 when the alleged incident took place. The victim testified that defendant placed a playing card down the back of her pants and said, "this goes in the back." In so doing, defendant touched the victim's buttock with his fingers. The victim testified that defendant then said, "this card goes in the front," but before defendant could proceed, the victim ran away. Defendant then followed her and told her that when she was nervous she should "lick [her] . . . fingers" and put them "in the front of [her] . . . bottom." According to the victim, defendant began to demonstrate by putting his two fingers up and grabbing some of her mother's face cream. There was also evidence that, prior to the touching, defendant had shown the victim a picture of a naked girl and had himself accessed child pornography on the Internet. Viewing all the evidence in the light most favorable to the prosecutor, we conclude that a rational trier of fact could have found that defendant touched the victim's buttock for the purpose of sexual arousal or gratification.

III. Probation

Defendant finally contends that the trial court erred in prohibiting his alcohol consumption during probation. Again, we disagree.

"A sentencing judge is accorded wide discretion in setting conditions of probation. Only if the conditions are unlawful will the judge's determination be disturbed." *People v Miller*, 182 Mich App 711, 713; 452 NW2d 890 (1990) (citations omitted). According to MCL 771.3(3), "The court may impose other lawful conditions of probation as the circumstances of the case require or warrant or as in its judgment are proper." Although the Legislature did not define "lawful condition," this Court has determined that to be lawful, "there must be a rational relationship between the restriction and rehabilitation." *Miller*, *supra* at 713.

In this case, the evidence does not indicate that alcohol or drugs played a role in defendant's crime. While the presentence investigation report indicates that defendant used cocaine in 1989, it also indicates that defendant has no substance abuse history and "no significant issues related to substance abuse." Nonetheless, given that probation is "a matter of grace" and "aimed, in part, at rehabilitation," *People v Johnson*, 210 Mich App 630, 634; 534 NW2d 255 (1995), and given that the goal of rehabilitation is "improvem[ment] of a criminal's character," Black's Law Dictionary (7th ed), we find a rational relationship between the restriction and defendant's rehabilitation.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Kirsten Frank Kelly
/s/ Stephen L. Borrello